

CALifornians for Renewable
Energy, Inc. (CARE)
C/o Michael Boyd
5439 Soquel Drive
Soquel, CA 95073

State of California
Energy Resources Conservation
And Development Commission

In the Matter of:)
) Docket No. 01-AFC-4
)
Application for Certification for the) Demand to Correct Past & Ongoing
East Altamont Energy Center) Violations of the Bagley-Keene
[East Altamont]) Open Meeting Act and Related Matters
_____)

Demand to Correct Past & Ongoing Violations of the Bagley-Keene Open Meeting Act and Related Matters.

INTERVENOR respectfully demands that the California Energy Commission (C.E.C.) cure or correct actions alleged to have been taken in violation of California Government Code §§11120 et seq. INTERVENOR contends that according to the Commission's own spokesperson, Chris Davis, to the Tracy Press¹, the Commission [or Committee²] held an un-noticed meeting³, at which Action⁴ was taken to,

¹ See attached August 7, 2003 Tracy Press news article titled *Compromise reached for energy center*.

² § 11121.2. As used in this article, "state body" also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body.

³ § 11125. (a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public. (b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

⁴ § 11122. As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

“arrive at a new set of pollution measures ... They have heard Calpine's objections, and they've come to a resolution that addresses Calpine's concerns ... The Commission considered a workshop with Calpine officials on the unresolved issues...but dropped the idea because the energy commission worked out the problems on its own. “

This acts as notice to call to your attention what CARE alleges was a substantial violation of a central provision of the Bagley-Keene Open Meeting Act, one that may jeopardize the finality of the action taken to approve Calpine's Application for Certification of the East Altamont Energy Center (01-AFC-4).

The Commissions failure to provide proper notice to INTERVENOR, and other members of the public violated the Bagley-Keene Open Meeting Act California Codes Government Code §§ 11120-11132 on its face where it states,

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed. In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

As no notice was provided INTERVENOR we where not allowed a lawful opportunity to appear as a full Party⁵ in these proceedings, and this fails to meet

⁵ CARE wishes to object to and formally protest Chairman Keese's actions barring Intervenors participation as full Parties as arbitrary and capricious, and an illegal abuse of discretion as regards to CARE, and other Intervenors whose state and federal constitutional rights to equal protecting and due process of law, have been violated by the Chairman as evinced by the July 23, 2003 Business Meeting transcript where it stated. [RT at pages 218 and 219]

24 CHAIRMAN KEESE: Major, one moment. Mr.
25 Sarvey, I notice your acute interest in getting to
1 the microphone.
2 (Laughter.)
3 CHAIRMAN KEESE: I am going to note that
4 you're no longer a party to this proceeding. This

the notice requirements of the Bagley-Keene Open Meeting Act. In fact the Commission Chairman first broached the need for a workshop to resolve outstanding issues in this case [July 23, 2003 Business Meeting RT at page 175].

10 CHAIRMAN KEESE: No, I don't see any
11 questions at this point. Let me just say, as we
12 enter into this, that this has been a reasonably,
13 I guess controversial siting case, judging by the
14 length of it and the numerous hearings we've had,
15 Commissioner Pernell and I.
16 And it presents a new case really to the
17 Commission, unique, where we have a power plant
18 site that is on the far edge of both a county and
19 an air district. And the closest communities
20 reside in another county and another air district.
21 We have grappled with the positions of
22 the applicant, who believe that this project was
23 fully mitigated by the actions of the Bay Area
24 District in which it sits. And by staff and
25 others, who felt that under a CEQA analysis a
1 total independent decision should be made with
2 respect to the impacts on the other District, San
3 Joaquin.
4 As I say, the Committee has grappled
5 with this and come up with a recommendation. We
6 are not suggesting that this should be a
7 precedential decision for all future siting cases.
8 We are suggesting that this is a decision in this
9 case based on all the facts of this case.
10 We are recommending to the Commission
11 that in a broader hearing process they consider
12 the appropriate treatment of facilities located in
13 like situations.

The closing remarks of the applicant at the July 23, 2003 Business Meeting are evincive that all Parties expected a workshop to take place [RT at page 245].

3 MR. WHEATLAND: If I could just add, the
4 applicant is certainly willing to meet with the

5 is a Commission meeting. With that said, we're
6 going to allow you to make a comment on this issue
7 at this time.

8 In other words, we're out of that
9 Committee process where you were an intervenor.

5 Committee in a workshop format if the Committee
6 believes a workshop or a face-to-face discussion
7 of these issues with all the parties present might
8 be beneficial.

The cure INTERVENOR seeks is the notice by said Commission [or Committee] of said Workshop, in accordance with the Act, to provide Intervenors' as full Parties an opportunity to exercise our constitutionally protected due process and equal protection rights, and the public an opportunity for meaningful and informed public participation in accordance with the First Amendment constitutional rights enjoyed by citizens of the United States.

INTERVENOR is very concerned about this continuing and gradually worsening trend of sacrificing the public participation and other aspects of environmental protection mandated by CEQA or other schemes in favor of expediting as much as possible the siting, construction and operation of powerplants. We believe the Commission has become and is becoming particularly susceptible to the tremendous pressures being exerted by sources as imposing as our president, our governor, and members of the state (as well as federal) legislature, who are crying out for an expedited review process in large part because the siting/construction/operation of new powerplants is perceived as the primary measure for ending the energy crisis.

The Commission lacks the authority--the discretion or the jurisdiction, whatever you want to call it--to preclude or pare down public participation and environmental protection in the manner being touted by the previously mentioned highly powerful and persuasive sources stridently advocating these very things, and, we are afraid, in the manner the Commission is doing in apparent response to the pressure.

What the Commission is being pressured to do, and what it has done and is doing, is to continue perpetrating what is in essence a fraud on the people of this state and this nation. The Commission is being asked to continue giving the

essentially false impression that the environmental protection mandated by CEQA and other statutes is being maintained, while the process of getting & keeping more powerplants on line to end the energy crisis as soon as possible is being implemented. As you well know, this is simply not true.

In this broader context, the proper notice of the previously mentioned proceedings pursuant to the Bagley-Keene Open Meeting Act (the Act), which is obviously intended to assure and enhance public participation, must be given to provide the public with the kind of opportunity for meaningful and informed public participation required by CEQA or other statutory schemes, as well as to comply with the constitutional, including First Amendment, rights of INTERVENOR.

In closing, let me again point out that my comments are not a matter of mere technicalities. These Actions in the absence of a legally noticed meeting have caused and continue to cause INTERVENOR and other members of the public actual prejudice by interfering with their right to public participation as well as constitutional rights previously mentioned.

Respectfully submitted,

By 
Filed Electronically 8-10-03
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Verification

I am an officer of the intervening corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 10th, 2003, at Soquel, California

Michael E. Boyd

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Tracy Press

Tracy, California ♦ Thursday, August 7, 2003

Compromise reached for energy center

Press staff report

The California Energy Commission is settling its differences with energy company Calpine Corp. and will vote on the East Altamont Energy Center's final approval Aug. 20.

On July 23, the energy commission discussed the power plant, slated for a site 10 miles northwest of Tracy, but decided to postpone its final vote. The commission's staff was unsatisfied with measures Calpine proposed to lessen the effects of the plant's air pollution on the San Joaquin Valley.

Energy commission spokesman Chris Davis said the commission has arrived at a new set of pollution measures that it will release later this week.

"They have heard Calpine's

objections, and they've come to a resolution that addresses Calpine's concerns," Davis said.

The Aug. 20 meeting should be the final word on the project, he said. The commission considered a workshop with Calpine officials on the unresolved issues, Davis said, but dropped the idea because the energy commission worked out the problems on its own.

The East Altamont Energy Center would be a 1,100-megawatt plant — enough to power about 1 million homes.

It will also produce about 500 tons of air pollution every year, according to an energy commission staff report. To make up for that pollution, Calpine agreed to purchase emissions credits — payments to other California companies for reducing their pollution — and fund clean-air programs in the

affected areas, including natural gas buses in Tracy and Mountain House. The company also agreed to pay for new farm equipment and other clean-air measures throughout the San Joaquin Valley.

The energy commission's staff approved of Calpine's agreements with the Bay Area Air Quality Management District, but said its deal with the San Joaquin Valley Air Pollution Control District did not go far enough.

The revised conditions for the East Altamont Energy Center will be available later this week on the energy commission's Web site at www.energy.ca.gov/sitingcases/easaltamont/documents.

The commission's Aug. 20 meeting will begin at 10 a.m. at 1516 Ninth St., Sacramento.